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May 8, 1998

Magalie Roman Salas
Secretary
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-115

Dear Ms. Salas:

Herewith transmitted on behalf of United States Cellular Corporation ("USCC") are an original and twelve copies of its Comments on the "Request For Deferral and Clarification" filed by the Cellular Telecommunications Industry Association in the above-referenced docket.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,

Peter M. Connolly

Enclosure
cc (w/encl.): Janice Myles
ITS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' use of Customer Proprietary Network Information and Other Customer Information	)	

COMMENTS OF UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation ("USCC"), hereby files its Comments in support of the "Request For Deferral and Clarification" filed by the Cellular Telephone Industry Association ("CTIA"). USCC, a subsidiary of Telephone and Data Systems, Inc. ("TDS"), is the parent company of 43 MSA and 100 RSA cellular licensees, serving approximately 1.7 million customers. It thus has a large stake in the outcome of this proceeding.

I. CTIA Is Entirely Correct That The CPNI Rules Should Be Deferred As They Apply To CMRS Carriers

On February 26, 1998, the FCC released its order[1] in the

[1] See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, FCC 98-27, released February 26, 1998 ("Order").

above-captioned proceeding. Most crucially, the Order adopted new Section 64.2005 of the FCC's Rules, now scheduled to take effect on May 26, 1998, which governs the use and disclosure by telecommunications carriers of Customer Proprietary Network Information ("CPNI") obtained by such carriers in their provision of telecommunications services.

It is fair to say that the Order has been the subject of grave concern among CMRS carriers as it will, in the absence of FCC action on the CTIA petition, make unlawful wireless marketing practices which had been uncontroversial, and are undoubtedly pro-competitive and beneficial to consumers.

Specifically, in the Order and in new Section 64.2005 of its Rules, the FCC has applied the requirement of Section 222(c)(1) of the Communications Act[2] that telecommunications carriers may use CPNI without prior customer consent only in their provision of services "necessary to, or used in the provision of [a] telecommunications service" to forbid the use of CPNI, without prior consent, in marketing cellular handsets, call answering, voice mail, voice messaging, voice storage or retrieval services, or in the marketing of "fax store and forward," or Internet access services. The Commission found those not to be such services.

However, the FCC interpreted Section 222(c)(1) to permit the use of CPNI to market "inside wiring" services as well as services

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[2] 47 U.S.C. § 222(c)(i)

it has defined as "adjunct to basic," such as directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding and "certain centrex features."

The disparate treatment of wireless telephones and wireline inside wiring, which are analogous in the provision of telecommunications service, is both lacking in logic and unfair.

As CTIA shows, in the CMRS context, the FCC's distinctions have been inappropriately imported from old wireline categories, which, for example, distinguished "CPE" from "basic" service and fail to take account of basic CMRS operational realities. For example, unlike the case with respect to local exchange company CPE, under Section 22.927 of the FCC's rules, "mobile stations are considered to be operating under the authorization," and cellular phones are programmed with various phone and customer specific identification numbers by the wireless carrier. They are thus marketed as an integral part of wireless service by cellular and PCS licensees and their agents. Therefore, concluding that such handsets are not "necessary to, or used in" the provision of wireless service is simply wrong.

Also, CMRS licensees have never had to distinguish "information" services, such as voice mail, from "adjunct-to-basic" services, such as call forwarding. Rather, in part as a consequence of the careful and non-abusive utilization of CPNI in

their marketing, they have been able to offer customers all the information services they want and need.

In fact, wireless customers have to expect a wide variety of "bundled" services, especially including free or reduced price telephones, to be offered by their carriers in such carriers' marketing efforts. As CTIA notes, "bundling" in the CMRS context has been repeatedly found to be beneficial to carriers, to consumers, and to the public interest.

The Order's new requirements now threaten those marketing efforts fundamentally.

For example, at present, USCC's customer service representatives contact customers nearing the end of their service agreements and, based on their historic usage patterns, offer them specific calling packages best suited to their specific needs. Those offers often include free or reduced price equipment. USCC also offers voice mail to customers who receive a larger than average number of incoming calls. The newly adopted CPNI rules would preclude such efforts without onerous "consent" requirements.

USCC will not have in place, by May 26, 1998, the complex "notice and approval" procedures for obtaining customer consent to the use of CPNI set forth in new Section 64.20007 of the Rules or the internal supervisory procedures prescribed by new Section 64.20009. It will take many months and hundreds of thousands of dollars to put those systems in place. Thus, USCC will have to

curtail drastically its marketing efforts, lest it run afoul of the new prohibitions.

To its knowledge, other CMRS carriers are in similar circumstances.[3]

It is therefore urgent that the FCC act now on CTIA's request if the present competitive environment in the CMRS industry is to be preserved while the Commission considers, over the next few months, whether it may meet the objectives of the law by means less intrusive and counter-productive.

We therefore ask that the FCC grant the requested 180 day deferral of the effective date of Sections 64.1005(b)(1) and (b)(3) of the FCC's Rules.

II. Apart From The Deferral Issue, The FCC Should Clarify That CPNI Does Not Include Customer Names And Addresses and That The "Win Back" Rule Only Applies To Former Customers

USCC supports, for the reasons given by CTIA in its Petition (pp. 41-42), the request that the FCC clarify that CPNI should not be considered to include customer names and addresses and that Section 64.2005(b)(3), which deals with carriers' use of CPNI in dealing with "former" customers, should not be construed, as the Commission appears to do in Paragraph 85 of the Order, to apply to

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[3] We would also note that the new requirements will place at a particular disadvantage smaller carriers which do not have large staffs, billing programs which are easily modified, or operations which are technically integrated with those of sister companies.

present customers who are thinking of changing carriers.

As CTIA notes, customers certainly understand that their own service providers will be aware of their names and addresses and will make use of that information for billing and other legitimate commercial purposes. Thus the "expectation of privacy" issues which are at the heart of CPNI concerns simply do not arise with respect to customer names and addresses and the FCC should certainly clarify that point.

Also, the FCC should make clear that Section 64.2005(b)(3) of its Rules, which forbids the use or disclosure of CPNI "to regain the business" of customers who have switched to other carriers should not be interpreted to preclude the use of CPNI in a carrier's efforts to <u>retain</u> such customers. As CTIA notes, competition over a customer often results in lower prices and more attractive service offerings for that customer, results the FCC should wish to encourage. Before the customer is lost, it serves the public interest to promote vigorous competition for that customer, aided, in the case of the customer's present carrier, by service offerings geared to the customer's past behavior in the telecommunications marketplace.

Conclusion

For the foregoing reasons and those given by CTIA, the FCC should defer the effective date of Sections 64.2005(b)(1) and (b)(3) of its Rules for 180 days, to the extent they apply to the

provision of CMRS-related equipment and services. The Commission should also clarify the effect of those sections on the rule's "name and address" and "win-back" provisions as described above.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

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May 8, 1998

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